



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
1333 ISAAC HULL AVENUE
WASHINGTON NAVY YARD DC 20376-2101

IN REPLY REFER TO

5720

Ser SEA 00A5/DON-NAVY-2018-006923F

July 3, 2018

Ms. Jillie B. Richards
Akin Gump Strauss Hauer and Feld LLP
133 New Hampshire Avenue, NW
Washington, DC 20036

SUBJECT: FREEDOM OF INFORMATION ACT CASE DON-NAVY 2018-006923

Dear Ms. Richards:

This is our final response to your Freedom of Information Act (FOIA) request dated May 1, 2018, in which you seek a list of boiler water treatment (BWT) and cooling water treatment (CWT) chemicals that USN purchases, along with, the names of all current suppliers of BWT and CWT chemicals, and all suppliers of BWT and CWT chemicals from January 1, 2013 to present.

A thorough search of this Headquarters files was conducted, specifically those files located in the Naval Systems Engineering Directorate, Marine Engineering Division, (SEA 05ZB). Knowledgeable personnel with that office were not able to identify any lists of suppliers as identified in your request. They did recommend we direct your request to the Naval Supply Systems Command to search for responsive documents and direct response to you regarding that portion of your request. Upon completion of that search, they identified the Boiler Water/Feedwater Test and Treatment, NSTM 220 V2 R12 as responsive to your request. Even though this critical technical data has been categorized as "Distribution C", the list of chemicals by itself, when separated from the NSTM, is not considered critical data under the Arms Export Control Act. As such, the documents identified as 01 Cooling Water Treatment Chemicals Master Table; 02 Boiler Water Treatment Chemicals, and 03 Cooling Water Chemicals were found to be responsive to your request.

I considered your request under the FOIA, 5 U.S.C. 552, as amended, and Secretary of the Navy Instruction 5720.42F. After careful review of the documents identified above, I determined

they contain critical technical data categorized as "Distribution C" technical data that can only be released to U.S. Government agencies and their contractors. As such, I am denying the release of some portions of this data under exemption (b)(3). Exemption 3 requires the withholding of information prohibited from disclosure by another statute provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes a particular criteria for withholding or refers to particular types of matters to be withheld."

10 U.S.C. 130 and the Department of Defense (DoD) implementing directive, DoD Directive 5230.25, prohibit the disclosure of technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States with an approval, authorization, or license under the Arms Export Control Act. 10 U.S.C. § 130 is an exemption 3 statute.

The releasable portions of the requested documents identified above, are attached as an enclosure.

I am the official responsible for the decision regarding your request. You are advised of your right to appeal this decision. Should you decide to appeal this determination, you must do so in writing to:

Department of the Navy
Office of the General Counsel
1000 Navy Pentagon, Room 4E365
Washington, DC 20350-1000

Your appeal must be postmarked within 90 calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. In order to expedite the appellate process and to ensure full consideration of your appeal, it should contain a brief statement of the reasons you believe this decision to be in error.

For this determination, you also have the right to seek dispute resolution services from either the Department of the Navy FOIA Public Liaison, Mr. Chris Julka, at:

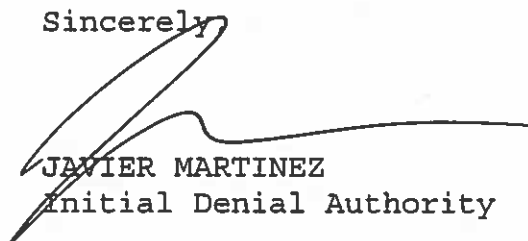
Christopher.a.julka@navy.mil, via phone: (703) 697-0031; or by contacting the Office of Government Information Services at: (<https://ogis.archives.gov/>), (202) 741-5770, ogis@nara.gov.

Questions regarding the action taken by this office to process your request may be directed to the Navy FOIA Service Center at (202) 685-0412 or via email at donfoia-pa@navy.mil.

Fees for processing your request have been waived in this instance. However, fees are assessed on a case-by-case basis and you may be charged for future requests.

If you have any questions concerning the foregoing, please contact Ms. Ginger Dolan, at 202-781-3359.

Sincerely,



JAVIER MARTINEZ
Initial Denial Authority

Enclosures

Copy to:
Commander
ATTN: FOIA Officer
Naval Supply Systems Command
5450 Carlisle Pike
PO Box 2050
Mechanicsburg, PA 17055-0791
Email: foianavsduphq@navy.mil